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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		9400-46 (030311)	
<p>I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on February 23, 2009.</p> <p>Signature: <u>Michele P. McMahan</u></p> <p>Typed or printed name <u>Michele P. McMahan</u></p>		Application Number	Filed
		10/722,696	11/24/03
		First Named Inventor	
		Maria Adamczyk	
		Art Unit	Examiner
		2457	Halim, Sahera
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. 58,685 Registration number</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<p><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>			

Bruce E. Owens, Jr.
Signature

Bruce E. Owens, Jr.

Typed or printed name

919/854-1400

Telephone number

February 23, 2009

Date

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Adamczyk et al. Confirmation No.: 8327
Serial No.: 10/722,696 Group Art Unit: 2457
Filed: November 24, 2003 Examiner: Sahera Halim
For: DATA ARCHITECTURES FOR MANAGING QUALITY OF SERVICE AND/OR
BANDWIDTH ALLOCATION IN A REGIONAL/ACCESS NETWORK (RAN)

February 23, 2009

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**REASONS IN SUPPORT OF APPELLANTS'
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review (hereinafter "Request") filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. § 41.31, and in accordance with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program, which have been extended indefinitely. No fee or extension of time is believed due for this Request beyond those that may otherwise be provided for in documents accompanying this paper. However, if any fee or extension of time for this Request is required, Appellants request that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee which may be required, or credit any refund, to our Deposit Account No. 50-0220.

Appellants hereby request a Pre-Appeal Brief Review of the claims finally rejected in the Final Office Action mailed November 26, 2008 (hereinafter the "Final Office Action"), in accordance with the rules set out in the July 12, 2005 OG.

The Claim Rejections Under 35 U.S.C. § 112, Second Paragraph

The Final Office Action asserts that the use of the phrase "and/or" renders Claims 1-28 indefinite under 35 U.S.C. § 112, second paragraph, because it is unclear whether the recitations following the phrase are part of the claimed subject matter. Final Office Action, page 2. In the Response to Arguments section, the Examiner agrees with Appellants that "claims can contain 'and/or' phrases as long as it is not making the claims unclear," and

further acknowledges that "the phrase 'and/or' in the instant case is understood as 'both or either of the two given alternatives.'" Final Office Action, page 12. However, despite confirming Appellants' position regarding the use and meaning of "and/or," the Final Office Action neither withdraws the § 112 rejections nor provides any further explanation as to why Claims 1-28 allegedly remain indefinite. Accordingly, Appellants respectfully request that the rejection of the pending claims under the second paragraph of § 112 be reversed by the appeal conference prior to the filing of an appeal brief.

Independent Claims 1 and 20 Are Patentable over Edgett

Claim 1 and 20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2003/0056092 to Edgett et al. ("Edgett"). Office Action, page 2. Appellants respectfully traverse these rejections on the grounds that Edgett fails to disclose or suggest all of the recitations of Claim 1.

Independent Claim 1 is directed to a data architecture for managing QoS and/or bandwidth allocation in a Regional/Access Network (RAN) that provides end-to-end transport between a Network Service Provider (NSP) and/or an Application Service Provider (ASP), and a Customer Premises Network (CPN) that includes a Routing Gateway (RG). Claim 1 recites, in part, "a NSP access session record maintained at the RAN" as well as "a corresponding NSP access session record maintained at the NSP." In rejecting Claim 1, the Final Office Action equates the "access session record" recited by Claim 1 with the "transaction data record" discussed by Edgett. Final Office Action, pages 3, 14. Appellants note, however, that Edgett does not appear to describe transaction data records as being maintained at both the RAN and the NSP; instead, Edgett depicts transaction data records as being maintained only at a transaction server. Edgett, paragraph [0252]. The Final Office Action itself affirms as much by noting that "[t]he applicant correctly recognized in the Remarks that Edgett's transaction data record ... are maintain at a transaction server." Final Office Action, page 14. As a result, Edgett's "transaction data record" cannot properly be considered as corresponding to the two distinct "access session records" of Claim 1.

Moreover, Appellants respectfully submit that Edgett fails to disclose or suggest "defining QoS," as recited by Claim 1. The Final Office Action asserts in the Response to

Arguments section that Edgett discloses "defining QoS" because "session id [from the transaction data records] is used to generate usage report that includes cost, length, time of the service access etc. ... The information in the usage report defines the QoS." Final Office Action, page 14. Appellants respectfully submit, however, that interpreting the phrase "defining QoS" as encompassing the generation of a usage report is contrary to the common meaning of the word "define" as well as the plain language of Claim 1 and Appellants' specification. The dictionary definition of the word "define" that is applicable in the context of Claim 1 is "to fix, decide, or prescribe, clearly and with authority." Webster's Third New International Dictionary at 592, 1986 (second definition of "define"). Appellants' specification expressly defines the term "QoS" as including but not limited to "treatment applied ... with respect to scheduling a resource, bandwidth allocation, and/or delivery target" Specification, paragraph [0049]. One of skill in the art, therefore, would understand "defining QoS" to mean "fixing, deciding, or prescribing the treatment applied with respect to scheduling a resource, bandwidth allocation, and/or delivery target." Accordingly, Appellants respectfully submit that "defining QoS" clearly relates to defining or specifying QoS parameters, not to retrospectively reporting on network usage statistics as described by Edgett. This reading of "defining QoS" is consistent both with Claim 1's preamble ("a data architecture for managing Quality of Service (QoS)") and with the numerous references to modifying, specifying, and controlling QoS in the various embodiments described in Appellants' specification. *See, e.g.*, Specification, paragraphs [0012], [0095], [0176]-[0178].

Finally, the Final Office Action on pages 3-4 reiterates its earlier allegation that the "application flow record...that defines QoS and/or bandwidth allocation" recited by Claim 1 is disclosed by paragraphs [0251]-[0257] and **FIGS. 14, 16, and 17A** of Edgett. Final Office Action, pages 3-4. The Final Office Action specifically asserts that "figure 17A shows, customer tables, access point tables, pricing tables, CDR tables, accounting tables, authentication transaction storage area or tables, batch history storage area or tables and SQM storage or tables." Final Office Action, pages 3-4. However, Appellants respectfully submit that it is unclear how either **FIG. 17A** or the other cited portions of Edgett could possibly disclose or even suggest the "application flow record...that defines QoS and/or bandwidth allocation" recitations of Claim 1. The Final Office Action provides no explanation as to how

FIG. 17A is applicable to the recitations of Claim 1, and no specific indication of where or how the above-quoted recitations of Claim 1 are disclosed. Moreover, the Final Office Action provides no citation to any other portion of Edgett disclosing or suggesting an "application flow record...that defines QoS and/or bandwidth allocation."

Accordingly, Appellants respectfully submit that at least the above-quoted recitations of Claim 1 are not disclosed or suggested by Edgett, and therefore that Claim 1 is patentable for at least these foregoing reasons. Appellants further respectfully submit that independent Claim 20 is patentable for at least the same reasons described above with respect to the patentability of Claim 1. Finally, the claims depending from Claims 1 and 20 are patentable at least per the patentability of the independent claims from which they depend.

Many Dependent Claims Are Separately Patentable

Appellants further respectfully submit that several of the dependent claims are also separately patentable. In the interest of brevity and without waiving the right to argue additional grounds should this Request be denied, Appellants will discuss only the issues raised by the rejections of dependent Claims 3, 5, 17, and 23.

Claims 3, 17, and 23 each includes the recitation of "an application service provider session record maintained at the RAN that defines QoS and/or bandwidth allocation," along with "a corresponding application service provider session record maintained at the ASP." In rejecting these claims, the Final Office Action cites in part to the "summary and Fig. 3 par. 0073-0082" and "Fig. 14 and 16." Final Office Action, pages 5 and 8-9. The portions of Edgett relied upon by the Final Office Action describe a network configuration allowing for the secure authorization of a remote user, but do not appear to disclose or suggest application service provider session records maintained at both the RAN and the ASP, or of such records defining QoS and/or bandwidth allocation, as recited by Claims 3, 17, and 23. Accordingly, Claims 3, 17, and 23 are patentable over Edgett for at least the foregoing reasons.

Appellants further respectfully submit that Claim 5, rejected under 35 U.S.C. § 103(a) as being unpatentable over Edgett in view of U.S. Patent Publication No. 2004/0165592 to Chen et al. ("Chen"), is separately patentable. Final Office Action, page 10. Claim 5 recites, in part, "a DSL line element maintained at the RG associated with the xDSL line that includes

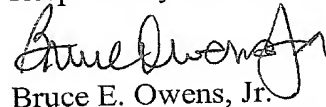
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a line identifier and the synchronization rate of the xDSL line; and a corresponding DSL line element including the line identifier and the synchronization rate of the xDSL line maintained at the RAN." In rejecting Claim 5, the Final Office Action acknowledges that Edgett does not disclose or suggest the above-quoted recitations of Claim 5, but asserts that paragraphs [0025] to [0033] of Chen supply the missing teachings. Office Action, pages 10-11. The portions of Chen relied upon by the Final Office Action describe a network infrastructure that includes a LDAP (Lightweight Directory Access Protocol) server or directory 30 that receives subscriber and network information including a switch identifier, such as an IP address or switch-specific proprietary address, and DSL synchronization rates. Chen, paragraph [0032]. Appellants respectfully submit, however, that the cited portions of Chen do not disclose or suggest that the network infrastructure includes any element associated with the xDSL line that includes a line identifier (as opposed to the switch identifier discussed by Chen), and is maintained at both the RG and the RAN, as recited by Claim 5. For at least these reasons, Appellants respectfully submit that Claim 5 is separately patentable over Edgett and Chen.

Conclusion

For at least the foregoing reasons, Appellants respectfully request that the present application be reviewed and that the rejection of all claims be reversed by the appeal conference prior to the filing of an appeal brief.

Respectfully submitted,



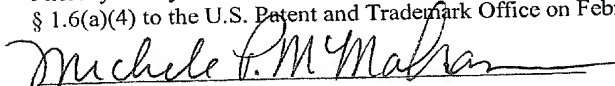
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CERTIFICATION OF TRANSMISSION

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